

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHARLES RICHARDS,)	
Plaintiff)	
)	
vs.)	Civil Action No. 04-1406
)	Judge Thomas M. Hardiman/
COMMONWEALTH OF)	Magistrate Judge Amy Reynolds Hay
PENNSYLVANIA; LINSSEN MAYER;)	
ALLEGHENY COUNTY JAIL DEPUTY)	
WARDEN CALVIN LIGHTFOOT; TFO)	
DANIEL SOROCZAK; TFO JEFF)	
BRAUTIGAN; TROOPER WALKER;)	
FRANK DREW; TROOPER SEELEY,)	
Defendants)	

ORDER

AND NOW, this 4th day of April, 2006, IT IS ORDERED that this Court's Order dated March 28, 2006, denying Plaintiff's Petition for Refund of the Filing fee, is hereby VACATED.

FURTHER, it appearing that the plaintiff was at the time of filing his civil rights complaint -- and remains -- in civil custody on an immigration matter at the York County Prison, this Court finds that plaintiff was not a "prisoner" within the meaning of 28 U.S.C. 1915(b) and (h) and, thus, was not required to pay the filing fee in this case. Agyeman v. INS, 296 F.3d 871, 885086 (9th Cir. 2002); LaFontant v. INS, 135 F.3d 158, 165 (D.C.Cir. 1998); Ojo v. INS, 106 F.3d 680, 682-83 (5th Cir. 1997); Gashi v. County of West Chester, 2005 WL 195517, *4-6 (S.D.N.Y. Jan. 27, 2005). Because the Court erroneously ordered plaintiff to pay the filing fee pursuant to the provisions of the

Prison Litigation Reform Act, the Plaintiff is entitled to a refund of the filing fee.

Accordingly, IT IS ORDERED that the Clerk of Court shall issue a check in the amount of One Hundred and Fifty Dollars and No Cents (\$150.00) to:

Charles Isaac Richards
#83176
York County Prison
3400 Concord Road
York, PA 17402

/s/ AMY REYNOLDS HAY
AMY REYNOLDS HAY
United States Magistrate Judge

cc: Charles Richards
#83176
York County Prison
3401 Concord Road Y.C.P.
York, PA 17402

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